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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1972

No. 71

In the Matter of
TENNESSEE CENTRAL RAILWAY COMPANY,
Debtor,

WILSON COUNTY, TENNESSEE,
Petitioner,

v.

A. BATTLE RODES,
Trustee of Tennessee Central Railway Company, et al.,
Respondents.

PETITION FOR WRIT OF CERTIORARI

To the United States Court of Appeals for the Sixth Circuit

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To the United States Court of Appeals for the Sixth Circuit

Petitioner prays that a writ of certiorari issue to review the judgments of the United States Court of Appeals for the Sixth Circuit entered in the above case on February 2, 1972. A timely petition for rehearing was denied on April 4, 1972.

OPINIONS BELOW

The opinion of the Court of Appeals and the opinion of Judge Paul C. Weick dissenting from the denial of rehearing have not been reported officially as of this date; however, they are set out in the Appendix of Petition No. 71-...., filed by Petitioner LOUISVILLE AND NASHVILLE RAILROAD COMPANY, et al., in the same MATTER, at pages A-1 and A-16 respectively. The opinion of the District Court is set out in the Appendix of Petition No. 71-.... at page A-21, and is reported at 316 F.Supp. 1103. The judgment of the District Court is set out in the Appendix of Petition No. 71-.... at Page A-47.

JURISDICTION

The opinion and order of the Court of Appeals for the Sixth Circuit was entered on February 2, 1972, and is contained in the Appendix of Petition No. 71-.... at page A-1. A timely petition for rehearing was denied on April 4, 1972 and copies thereof are appended to Petition No. 71-.... at page A-53. The jurisdiction of this Court is invoked under 28 U.S.C., § 1254 (1).

QUESTIONS PRESENTED

1. Did the repeal, in the Reorganization Act of 1966,[1] of 15 U.S.C., § 603, which expressly denied governmental priority under R.S. 3466 to RFC loans of the type herein involved, nine years after the abolition of the RFC[2] and transfer of RFC notes to the Secretary of the Treasury, suddenly create for the United States a priority status which they had not enjoyed before on RFC notes?

2. Is R.S. 3466 (31 U.S.C., § 191) applicable to the essentially equitable railroad reorganization proceedings under § 77 of the Bankruptcy Act?

3. A third question was pretermitted by the Court of Appeals:[3]

> Are claims of creditors occurring within six months before institution of reorganization proceedings under § 77 accorded priority in such proceedings under equitable principles, ahead of mortgagee claims, irrespective of whether or not there was diversion of current income?

4. Is this Petitioner's lien and that of other municipalities and counties of the same class which is granted by Tennessee Statutes (Tenn. Code Ann., §§ 67-1801,-1802,-1803) superior to the mortgage lien of the United States?

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[1] Pub. L. 89-554, § 8(a) (Schedule of laws repealed), Sept. 6, 1966, 80 Stat. 378 (Recodification of Title 5).

[2] Reorganization Plan No. 1, 1957, June 30, 1957, 22 F.R. 4633, 71 Stat. 647.

[3] The District Court held in Petitioner's favor on this question and Judge Weick, dissenting in the denial of the petition for rehearing occurred.

STATUTES INVOLVED

The pertinent section of § 77 of the National Bankruptcy Act (11 U.S.C. § 205); R.S. 3466 (31 U.S.C. § 191); 15 U.S.C. § 603; the pertinent section of Reorganization Plan No. 1 of 1957, effective June 30, 1957, 22 F.R. 4633, 71 Stat. 647; and Tennessee Statutes § 67-1801,-1802,-1803. Section 77 (b) of the Bankruptcy Act (11 U.S.C. 205 (b), R.S. § 3466 (11 U.S.C. § 191)) and the Tennessee Statutes are set forth in this Petitioner's Appendix, pages A1-A3. The remaining statutes involved are set forth in the Appendix of Petition No. 71-.....

STATEMENT OF THE CASE

The jurisdiction of the United States District Court for the Middle District of Tennessee was invoked by the filing of a petition for reorganization under § 77 of the Bankruptcy Act of Tennessee Central Railway Company on December 14, 1967. We rely on the Statement of the Case of Petitioner, LOUISVILLE AND NASHVILLE RAILROAD COMPANY, et al, which is set forth in Petition No. 71-..... at page 4 with the following additions. Wilson County, Tennessee and other municipalities and other counties in the same class have submitted claims for back taxes. The Petitioner relies on Tennessee Code Section § 67-1801 which grants a lien for these taxes, however, if the priority claim of the United States is sustained this Petitioner and others of the same class will receive nothing for its claim for back taxes in the total amount of $84,437.97. This tax lien arose out of an assessment of $1,760,000.00 for 1965-66 and a 1967 assessment of $1,080,000.00 on property of Tennessee Central Railway Company.

The salvage value of the operating line was appraised at $2,841,720.00 (J.A. page 45) and three segments of the line were sold for a total of $1,465,000.00 (J.A. page 85).

No federal claims are involved in this suit.

Th District Court ruled that this Petitioner and others in the same class were afforded priority under the applicable Tennessee Lien Statute and that this Petitioner might be afforded priority as a six-months creditor as well.

On appeal this decision was reversed. The Court of Appeals held that R.S. 3466 controlled and that the liens of Wilson County, Tennessee and other municipalities and other counties in the same class were merely general ones, not perfected, and that R.S. 3466 gives priority to the United States. A timely petition for rehearing was denied.

REASONS FOR GRANTING THE WRIT

The Petitioner submits that the cases relied on by the Court below (Small Business Administration v. McClellan, 364 U.S. 446 (1960), W. T. Tres. E. Co. v. Forder Realty Co., 318 F.2d 81), in reversing the District Court **did not involve railroad reorganization proceedings in which all federal tax claims were paid**, and thus did not consider the equitable nature of the proceeding or the far reaching consequences of allowing a claim arising under a mortgage priority over a valid tax claim in a railroad reorganization proceeding and thus stripped the Court of discretionary equity jurisdiction on questions which involve very important legal and equitable considerations in the implementation of railroad service during reorganization proceedings and to the tax structure of the counties and municipalities affected thereby.

CONCLUSION

For the reasons set forth above and in Petition No. 71-...., it is respectfully submitted that this Petition for a Writ of Certiorari be granted or that the judgment of the District Court should be reinstated.

Respectfully submitted

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APPENDIX

Pertinent Statutory Provisions

We rely on the Appendix of Petitioner LOUISVILLE AND NASHVILLE RAILROAD COMPANY, et al., Petition No. 71- ..... and the Appendix of Petitioner KOPPERS COMPANY, INC., Petition No. 71..... for the listing of some of the pertinent statutory provisions with the following additions:

67-1801, T.C.A. **Taxes on which lien based.**—The assessed taxes on all real estate, personalty, railroad, telegraph, and telephone, and other public service companies, and all damages and costs accruing thereon, shall be and remain a first lien upon such property, from the tenth of January of each and every year, for the taxes of that year.

67-1802, T.C.A. **Property subject to lien.**—This lien shall extend to each and every part of all tracts or lots of land, and to every species of taxable property, notwithstanding any division or alienation thereof, or the assessing or advertising the same in the name of persons not actually owners thereof at the time of the sale, or though the owner be unknown.

67-1803, T.C.A. **Lien attaching to whole property.**—Said taxes shall be a lien upon the fee in said property, and not merely upon the interest of the person to whom said property is or ought to be assessed, but to any and all other interests in said property, whether in reversion or remainder, or of lienors, or of any nature whatever.